

19

Department of *L. Russell*OFFICE *of the Board of Revenue*STATION *Madras*Mis No. *2605*
*2605**A3123/33*Dated *25/9/33*

To whom sent

Date Initial

Given for copying

Copied

Examined

Signed

Given for despatch

Despatched

Indexed

To be destroyed on*

*Proceedings despatched
8/25/9
records to follow
20 SEP 10
832*

Pages in the file

(SUBJECT.)

*Suits - (Bellary) - Bellary & Mysore -
S no 331/33 - Bellary Town -
Township - Enhancement of Government.
Defence - sanctioned.*

* Not to be filled in in the case of permanent records.

In reply, please state
number, date and short

DEPARTMENT.

Received

Registered

From (Name) F.W. Stewart Esqr. C.I.E., I.C.S.,

(Designation) Collector of

Post Box (STATION) Bellary.

Telegraphic Address

To The Secretary to the Commissioners,

Land Revenue Settlement.

Madras.

Ref. C. No. 3141/33., dated 10th Sept. 1933.

Sir

* Suit - O.S. No. 331/33 - Bellary District Munsiff's Court - Plaintiff Mr. H. Thimma Krishna Rao - Ground rent - enhancement.

ENCLOSURES

SPARE COPIES

M.R.Ry., H. Thimmakrishna Rao has filed a suit against Government for the refund of Rs. 2/- and for permanent injunction restraining Government from charging enhanced ground rent.

2. The facts of the case are:--

Mr. H. Thimmakrishna Rao and others purchased a plot of land in that commonly known as Blake's Choultry inam and constructed houses on it. As the land was a Dasabandam inam it was redeemed by Government in G.O. No. 3377 Rev. dated 9-11-1912. But Government were pleased in their order No. 2822 Rev. dated 22-9-1913 communicated in B.P. No. 3743 Mis. Confdl. 166 dated 2-10-1913, to approve the assignment of the land already built upon to the owners subject to the following conditions:--

- (i) that no further buildings should be constructed on the land without the Collector's approval,
- (ii) that if further buildings are constructed without the Collector's approval the ground rent fixed on the land would be enhanced, and
- (iii) that ground rent would be liable to periodical revision.

The plaintiff and some others made some extensions without authority. An enhanced assessment of Rs. 2/- was charged for the extension made by the plaintiff. Against this order he appealed to the Board and the Board in its B.P. Mis. 1439 dated 22-5-33 reduced it to 0-4-0.

2

- 2 -

K-1-5 (P)
11-5-8

11-8-3

11-2-44
(Q)

11-4-3

11-1-61 (J)

11-13-1 (J)

11-57 (J)

(J)
(R)

11-5-8 cf

11-9-11 cf

Without waiting for the disposal of his appeal petition, the plaintiff filed the plaint - a copy is enclosed. The relief claimed by him is (i) a decree for the refund of Rs.2/- and (ii) a decree for a permanent injunction not to levy in future the alleged wrong penal assessment on the so called encroachment. As regards the first, the amount has been reduced to 0-4-0 and the second, the extra charge was not levied under the Land Encroachment Act but under the special orders of Government.

The plaintiff and others filed a suit against Government in O.S. 53/14 in the Bellary District Court. One of the issues framed then is similar to the one raised in the present plaint. The District Judge then decided that the court had no jurisdiction under Sec. 58 of Act II of 1864 to deal with questions of rates of Ground rent and it was therefore not competent for him to decide whether or not ground rent imposed on the plaintiffs was excessive. A copy of the judgment is enclosed. There was an appeal to the High Court and it was also dismissed. The Chief issue in the present suit clearly is, as regards the power of Government to impose enhanced ground rent. A copy of the written statement prepared by the Government Pleader is enclosed for approval. I request the Board's sanction for the defence of the suit.

11-9-11 cf

3. The plaint is dated 21-6-33, the summons were served on 3-7-33 and the suit is posted to 16-9-33 for filing the written statement. The Government Pleader has intimated that he will move the court for a further extension of time.

4. The following records are enclosed.-

- (i) Copy of the plaint.
- (ii) Written statement.
- (iii) Judgment in O.S. 53/14.
- (iv) R.Dis. 120/17-7-19.
- (v) ,, 87 Confdl. dated 9-10-15.
- (iv) ,, 3366 dated 14-5-32.
- (vii) ,, 5758 dated 5-6-33.
- (viii) ,, 2366/20 dated 5-10-20.

IX. Two sketches A and B.

3

- 3 -

11-43-44 (A)
11-29-30
(P)

11-14 (A)

11-57 (J)
(R)
11-9-11 cf

5. The Board will observe that both the Collector and the Board have levied enhanced ground rent only on the plot actually built upon instead of on the whole plot in his occupation. Such small penalties are proving ineffective in preserving the original object of the conditions imposed by Government which was to prevent this suburb being transformed from a high class residential area into an ordinary bazaar and incidentally spoiling the Collector's bungalow. In future I propose to enhance the ground rent on the whole occupation. If the court has no jurisdiction the question of the right to do this will not arise. The draft written statement has been so framed as not to bar correction of the practice in the case of H. Timmakrishna Rao or any other owner of the plots of the erstwhile inam lands.

K.K.R.11-9-33. *JK*
11/9

12/9/33
For Collector.

5

In the Court of the District Munsiff of Bellary.

O.S.No.551 of 1955.

Between:--

H. Timmakrishna Rao

Plaintiff.

and

The Secretary of State for India in Council
Represented by the Collector of the
Bellary District Bellary.

Defendant.

Plaint under Order VII Rule 1 C.P.C.

1. H. Timmakrishna Rao, the Plaintiff is the son of late H. Rama Rao, aged about 71 years, is a Brahmin Hindu, is an Advocate practising at Bellary and residing at Satayanarayanapet, Bellary.

His address for service of process is as above.

2. The Defendant is the Secretary of State for India in Council and is represented by the District Collector, Bellary, Bellary District, Bellary, and the Defendant's summons will have to be served on the said District Collector, Bellary.

3. The Plaintiff is the owner of the northern most plot of about 4 acres of dry land adjoining the railway line near the second railway level crossing from Bellary railway station towards Guntakal and has been paying a ground rent of Rs. 12.8.0 an acre from the date of the last re-settlement of 1925, which the Plaintiff and other plot holders are complaining as exorbitant.

4. Owing to the plague at Bellary which continued for a long time after 1901 the Plaintiff and some others jointly sought in July 1904 a Dharmadayam Inam land of about 40 acres called the Blake's choultry Inam land with the permission of the then Collector for building a few houses and divided the plot among themselves. Out of ~~the~~ which the Plaintiff was allotted in August, 1904, about 9 acres of land for his portion out of which he is yet in possession of about 4 acres. For various reasons the Dharmadayam Inam was thought to be unnecessary and the Inam was resumed by the Government in 1912.

5. Though order No. 3377, Revenue, dated 9th November 1912 Miscellaneous passed by the Madras Government the said Blake's Choultry Inam covered by Title Deed No. 2698 of Bellary, in the Bellary District was resumed, the Title Deed was cancelled and the land comprised in the title deed was transferred to town site. The land already built upon was ordered to be assigned on town site pattas to the alienees in possession on payment of a reasonable ground-rent fixed with reference to that paid on adjacent holdings or similar lands in the neighbourhood. The assignment was subject to the condition that alienees-in possession should relinquish that portion of the land which has not been built upon, which will then be converted to poramboke. On the strength of the above order this Plaintiff was allowed to continue in the occupation of about 3 acres 41 cents in S.Nos. 851 and 855 forming part and parcel of the Blake's Choultry Inam levying first a ground rent of Rs.6.4.0 per acre which was undone and increased to Rs.12.8.0 per acre making ultimately a ground rent of about Rs.42.10.0 excluding cesses on the Plaintiff's extent in the last resurvey settlement of 1925. This survey settlement took away the previous conditions if any and put the Plaintiff's site on par with other town sites in Bellary creating the same survey tenure for all. There was no resigning as contemplated in the above order on the part of the Plaintiff, but the authorities took it for granted that there was such resignation and carried forcibly their will. In carrying out the Government order the Tahsildar of Bellary even mentioned in a notice that the Plaintiff should not construct further without further permission of the Collector to which this Plaintiff and others protested as going beyond the Government order especially as the Plaintiff and some others had only thatched portions attached to their houses for cattle and ~~and~~ other purposes and had not completed their buildings and the order was too vague and illegal in view of the fact that about 4 acres had been allotted to the plaintiff on a fixed ground rent and town site patta.

At any rate, the Plaintiff had not agreed with the Government to hold his big plot of land on the condition of going up to the Collector for permission for converting the thatched portion into tiled one and he was led to believe that he could do so without any further permission.

6. Though the Plaintiff has not built anew after completing what was existing at the time of giving town site patta rights, except turning a thatched shed into a small office room of 30 feet by 23 feet, the Collector of Bellary on his own initiative has levied a penal assessment of Rs.2/-, on the untenable and incorrect ground that the Plaintiff had encroached 8 cents of ground in 1901 which includes 3 cents of ground brought to light as encroachment in 1920. What the Collector means by encroachment in 1920 cannot be made out ~~by the records~~ and if it refers to a room that was tried to be built by the side of a water course running to the south of the Plaintiff's site, it is ignored that the attempt was given up and that there is now no building of any sort about that proposed place and the building came down owing to heavy rains soon after building it. The Collector's order calling it an encroachment alleged to be under the Madras Encroachment Act is wholly illegal and unauthorised by any law or contract. Even on the merits there is no ~~fixing~~ building contemplated on the so called 8 cents, as the whole of Plaintiff's building now existing is on about 10 cents of land out of about 4 acres allotted to Plaintiff for building purposes. Putting up tiled roof in place of thatch in an out-shed cannot be construed as new building or encroachment. In the same way a servant's thatched temporary shed which has been included to make up the so called encroached area cannot be considered as permanent building. Under the above circumstances the collection of Rs.2/- as the penal assessment compulsorily collected from the Plaintiff on behalf ~~of the Defendant~~ of the Defendant by the Reddy of Bellary on or about the 12th December 1952 under distraint warrant is wholly illegal and this suit is filed for the refund of the above amount wrongly collected and for a permanent injunction against the Defendant

from levying it again as a periodical excess enhanced payment.

7. The cause of action accrued to Plaintiff at Bellary on or about 12.12.1932 when the above amount was compulsorily collected.

8. That the notice required to file this suit against the Defendant required under section 80 of the Civil Procedure Code was sent to the District Collector Bellary on 13th March 1933 and this suit has been filed after 2 months as no adequate relief has been vouchsafed up to date.

9. The value of the suit for purposes of valuation and jurisdiction is the same and the Plaintiff values the permanent injunction at Rs.5/- sought for and court fees eight annas is paid for the same and so another court fee of eight annas is also paid for the refund of Rs.2/- wrongly collected.

10. The Plaintiff therefore prays that a decree for the refund of Rs.2/- by the Defendant to the Plaintiff may be passed as well as a decree for permanent injunction not to levy in future the said wrong penal assessment of Rs.2/- on the so-called encroachment every year with costs of the suit.

Plaintiff.

Verification.

I, H. Rimmakrishna Rao, the Plaintiff in the above suit do hereby declare that what is stated in paras 3-6 is true to my personal knowledge and what is stated in the other paras is true to my information which I believe to be true.
Verified and signed by me at Bellary this 9th day of June 1933

Plaintiff.

/True copy/

(Sd) T. Hanumantha Rao. 21.6.33.
Vakil.

(By order)

/True copy/

(Sd) H. Raghavendra Rao.
Deputy Nazir.

(Sd) M. Narayana Rao
English & Urdu

Please kindly type 2 copies as corrected in 19
In the Court of the District Munsif of Bellary.

Original Suit No. 331 of 1933.

Between

H. Timmakrishna Rao.

Plaintiff.

a n d

The Secretary, of State for India in Council represented by the Collector of Bellary District, Bellary. Defendant.

Written Statement on behalf of the defendant under Order VIII, Rule 2 C.P.C.

1. *This suit is not maintainable in law and this*
2. *This* defendant puts the Plaintiff to strict proof of all the allegations *in the plaint that are not expressly admitted hereunder*
3. *AS* *regards* the allegations in *plaint* paras 3, 4 and 5 of *this* *This* defendant submits as follows:

(a) Government land 3 acres 19 cents, in extent was assigned to the Plaintiff *as* house site *Collector's confidential* *patta* in Dis. No. 87 dated 9.10.13 subject to certain conditions. At the time of the assignment the land contained certain buildings which are shown in the sketch A herewith filed. Amongst other things the following conditions were imposed on the assignee:-

(i) that he should construct no further buildings of any sort on the land without the Collector's approval.

(ii) that if any further buildings were constructed without the Collector's approval the ground rent fixed on the land would be enhanced.

(iii) that the ground rent will be liable to periodical revision.

(b) In 1920 it was detected that the Plaintiff had violated the conditions imposed on him by constructing further buildings. Accordingly the ground rent for the newly constructed building was enhanced to Rs. 12-8-0 per acre. Plaintiff was also *informed* notified then, that in the case of any future extensions his ground rent would be increased to Rs. 25/- per acre.

(c) In the resurvey settlement of 1925 an increased ground rent of Rs. 12-8-0 per acre was levied on all the lands assigned. The conditions imposed on the grantees were not in any way affected by the said resettlement.

(d) The acts done by the Government referred to in ~~paras~~ paras (a), (b) and (c) above are valid and legally binding on the plaintiff.

the plaint (e) The rest of the allegations in (plaint) paras 3, 4 and 5 *of* are incorrect, ~~misleading~~ and ~~argumentative~~.

3. As regards the allegations in ~~plaint~~ para 6 *of* this defendant submits as follows:-

5. In In 1931 it was discovered by this Defendant that the plaintiff had further violated the condition imposed on him by making ^a further ^{extension} (construction). Accordingly ^a ^{enhanced} penal assessment of Rs. 2/- was levied ^{on} the Plaintiff. This order ~~was~~ was not passed under the ^{Land} Madras Encroachment Act. ^{The} Plaintiff appealed against this ^{order} [penal assessment] to the Board and under the Board's orders the assessment is now reduced to four annas as the area of the further extension made ~~x~~ in 1931 was only one cent. This defendant is ready to refund the ^{excess} (excess) collection of Rs. 1-12-0. Plaintiff has filed this suit without waiting for the disposal of his appeal petition by the Board. The rest of the allegations in para 6 ^{are} (are) ~~argumentative~~. *incorrect*

4. This defendant ^{submits} *the plaintiff* ~~urges~~ that under the conditions of ^{his} ~~the~~ house site ^{grant the} (patta) plaintiff is not entitled to construct any fresh buildings ^{on} (in) the land granted to him, nor is he entitled to extend in any manner the buildings already existing on the land at the time of the grant ^{of} the patta. This defendant is rightfully and legally entitled to levy ^a ^{interest} (a) penal assessment whenever ^{the} plaintiff attempts to utilise the ^{unbuilt} (unbuilt) land (as it existed in 1913) by putting up either fresh buildings thereon ^{or} or by extending his old structures into the said ^{unbuilt} (unbuilt) land. The sketch B prepared by this Defendant and submitted herewith proves that the Plaintiff did violate the conditions in 1931 and became liable to ^{the} ~~the~~ penal assessment finally levied by the Board.

5. This Defendant ^{urges} *the plaintiff* ~~urges~~ that under the conditions of the grant in 1913, he is authorised to levy ~~penal~~ assessment on the entire land in the possession of the grantee, whenever the latter breaks any of the conditions.

6. This defendant further submits that this Court has no jurisdiction to question the levy of the penal assessment. Section 58 of Act II of 1864 is a bar to this Court's jurisdiction to question the validity of the levy of the penal assessment.

7. This defendant further submits that his authority to levy ^{the} ground rent and the question of ^{the} rates of ^{Government} were in issue in O.S. 53 of 1914 on the file of the District Court, Bellary between the Plaintiff ^{and others} and this Defendant and the District Judge held that the Civil Courts had no jurisdiction to deal with the question of ^{the} rates of Ground rent. The Madras High Court confirmed the judgment in A.S. 424 of 1917 on its file.

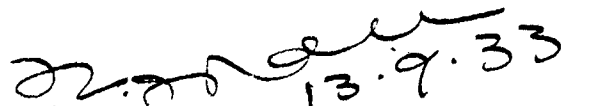
8. This Defendant further ^{Submits} ~~urges~~ that the Plaintiff's claim for the issue of a permanent injunction against the ^{levy} ~~levying~~ of ^{assessed} ~~penal~~ assessment in future is not maintainable in law.

9. This defendant ^{prays} ~~submits~~ that the suit may be dismissed with costs.

Defendant.

Government Pleader.

Verification:- I, the Defendant herein do hereby declare that what is stated in all the above paragraphs is true to the best of my knowledge and belief. Signed and verified this at Bellary this 10th day of September 1933.


13.9.33
Defendant.
For Collector.

Adjournment applied for
Subject. R. P. XXII-A-19-23,004-15-3-32 (6)

FOR MEMBER.

M₃

Swiss - (Bellary) - Bellary St
Munsiff - Os no 331/33 - Bellary Town
Townsite - Enhancement of ground-
rent - Defence Sanctioned 193

AS (CA)

READ AGAIN B. P. No.

2933

READ ALSO :-

A 3123/33 p 1-3 of 2

Register No. _____, From the _____, No. _____, dated _____ 193

193

193..

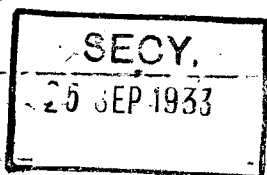
RESOLUTION.

His No. 2605 dated 25. 193

Collis W. S. p 9-11 of

The Board
Sanctions the defence
of the suit.

2/ The draft
written statement
as revised by the
Board should be
filed on behalf of
the Govt



To the Coll of p 3 of
Bellary with the
Copy of the revised written
statement and records as
per list at p 2 of returned

6/3/33
20/9/33
his requested to address the Board
separately
22/9/33
22/9/33
27/9/33

In the Court of the District Munsif for Bellary.

Original Suit No. 331 of 1933.

Between:

H. Timmakrishna Rao

Plaintiff.

and

The Secretary of State for India in
Council represented by the Collector
of Bellary District, Bellary.

Defendant.

Written statement on behalf of the defendant under

Order VIII, Rule X C.P.C.

--

1. This suit is not sustainable in law and this defendant puts the plaintiff to ^{the} strict proof of all the allegations in the plaint that are not expressly admitted herein.

2. As regards the allegations in paras. 3, 4 and 5 of the plaint, this defendant submits as follows:-

(a) Government land 3 acres 19 cents in extent was assigned to the plaintiff ^{as} on house site patta in Collector's Dis. No. 87 confidential dated 9-10-13 subject to certain conditions. At the time of the assignment the land contained certain buildings which are shown in the sketch A herewith filed. Amongst other things the following conditions were imposed on the assignee:-

(i) that he should construct no further buildings of any sort on the land without the Collector's approval.

(ii) that if any further buildings were constructed without the Collector's approval the ground rent fixed on the land would be enhanced.

(iii) that the ground rent will be liable to periodical revision.

(b) In 1920 it was detected that the plaintiff had violated the conditions imposed on him by constructing further buildings. Accordingly the ground rent for the newly constructed building was enhanced to Rs. 12-8-0 per acre. -- ^{by notice} Plaintiff was also informed/then, that in the case of any future extensions his ground rent would be increased to

Rs. 25/-

5-8 cf

5-7 cf

51-155
(V)
3 (C)

152 (V)

3/2/21 at
(C)

7 (P)
ora 3

Rs.25/- per acre.

(c) In the ~~resurvey~~^{re-} settlement of 1925 an increased ground rent of Rs. 12-8-0 per acre was levied on all the lands assigned. The conditions imposed on the grantees were not in any way affected by the said resettlement.

(d) The acts done by the Government referred to in sub paras (a) (b) and (c) above are valid and legally binding on the plaintiff.

(e) The rest of the allegations in paras. 3, 4 and 5 of the plaint are incorrect, ^{and} misleading and false.

3. As regards the allegations in para. 6 of the plaint this defendant submits as follows:-

In 1931 it was discovered by this Defendant that the plaintiff had further violated the conditions imposed on him by making a further extension. Accordingly ^{an} the enhanced assessment of Rs.2/- was levied from the -- plaintiff. This order was not passed under the Madras Land Encroachment Act. The plaintiff appealed against this order to the Board and under the Board's orders the assessment is now reduced to four annas as the area of the further extension made in 1931 was only one cent. This ~~defendant~~ defendant is ready to refund the excess collection of Re. 1-12-0. The plaintiff has filed this suit without waiting for the disposal of his appeal petition by the Board. The ^{incorrat} rest of the allegations in para. 6 of the plaint are argumentative.

4. This defendant ^{Submits} ~~urges~~ that under the conditions of the house site ^{grant} ~~plata~~ the plaintiff is not entitled to construct any fresh buildings on the land granted to him, nor is he entitled to extend in any manner the buildings already existing on the land at the time of the grant. This defendant is rightfully and legally entitled to levy enhanced ~~para~~ assessment whenever the plaintiff attempts to utilise the vacant site (as it existed in 1913) (by putting up either fresh buildings thereon or by extending his old structures into the said vacant site. The sketch B prepared by this Defendant and submitted

submitted herewith proves that the plaintiff did violate the conditions in 1931 and become liable to enhanced assessment finally levied by the Board.

5. This Defendant submits that under the conditions of the grant in 1913, he is authorised to levy enhanced -- assessment on the entire land in the possession of the grantees, whenever the latter breaks any of the conditions.

6. This defendant further submits that this Court has no jurisdiction to question the levy of the penal assessment. Section 58 of Act II of 1864 is a bar to this Court's jurisdiction to question the validity of the levy of the penal assessment.

7. This defendant further submits that his authority to levy ground rent and the question of the rates of ground rent were in issue in O.S. 53 of 1914 on the file of the District Court, Bellary between the plaintiff and others and this defendant and the District Judge held that the Civil Courts had no jurisdiction to deal with the question of the rates of Ground rent. The Madras High Court confirmed the judgment in A.S. 424 of 1917 on its file.

8. This Defendant further submits that the plaintiff's claim for the issue of a permanent injunction against the levy of ^{enhanced} ~~penal~~ assessment in future is not maintainable in law.

9. This defendant ^{prays} submits that the suit may be dismissed with costs.

Defendant.

XXXXXXXXXX

12
22.9.33

Chf 22.9.33.

11 29-30(P)
152(V)

57 (J)
357 Madras
Cov. Vol. I

(J)

57 (J)
(R)

8 of
para 10